

Federal Communications Commission

FCC 99-348

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Amendment of Parts 0, 80, and 90 of the
Commission's Rules to Make the Frequency
156.250 MHz Available for Port Operations
Purposes in Los Angeles and Long Beach,
CA Ports

WT Docket No. 99-332

DISPATCHED BY

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FCC MAIL SECTION

NOTICE OF PROPOSED RULE MAKING AND ORDER

Comments Due: January 18, 2000

Reply Comments Due: February 1, 2000

Adopted: November 15, 1999

Released: November 19, 1999

By the Commission:

1. INTRODUCTION

1. By letter the Los Angeles and Long Beach Port Pilots (jointly, LA/LB Pilots) request the assignment of an intership marine VHF channel dedicated to port operations (namely, pilot-tug communications) in the Ports of Los Angeles and Long Beach, California.¹ They note that marine VHF Channels 01A (156.050 MHz), 05A (156.250 MHz), and 63A (156.175 MHz) are currently used for U.S. Coast Guard (Coast Guard) designated Vessel Traffic Service (VTS) systems in defined areas of the United States.² The LA/LB Pilots recommend that one of these frequencies be designated for intership communications regarding port operations to improve vessel traffic safety in the Los Angeles and Long Beach port area.³ In this Notice of Proposed Rule Making, we propose to amend Part 80 of the Commission's Rules to designate marine VHF Channel 05A for port operations communications in Los Angeles and Long Beach, California ports. We believe that this action will foster reliable marine communications and increase safe vessel transit in the ports.

II. BACKGROUND

2. The LA/LB Pilots state that the ports of Los Angeles and Long Beach are among the busiest in the world, with considerable vessel congestion.⁴ In this type of environment, harbor pilots rely upon clear and effective radio communications with tugs to help ensure the safe ingress and

¹ Letter to Daniel B. Phythyon, Acting Chief of the Wireless Telecommunications Bureau from Los Angeles and Long Beach Port Pilots, dated April 30, 1997. (*LA/LB Letter*).

² *LA/LB Letter* at 2.

³ *Id.*

⁴ *LA/LB Letter* at 1.

egress of large vessels. The LA/LB Pilots note that there is only one frequency, marine VHF Channel 77 (156.875 MHz), dedicated to intership communications related to port operations.⁵ The Commission's Rules provide that Channel 77 "is limited to communications with pilots regarding the movement and docking of ships," and that "[n]ormal output power must not exceed 1 watt."⁶ The LA/LB Pilots state that marine VHF Channel 77 is frequently congested.⁷ They further contend that while output power is limited to one watt, communications often carry over from one port to the other and there is interference when more than one ship is maneuvering in or out of port.⁸

3. The LA/LB Pilots note that marine VHF Channels 01A (156.050 MHz), 05A (156.250 MHz), and 63A (156.175 MHz) are used for communications related to port operations in certain Coast Guard-designated VTS areas.⁹ Specifically, the frequencies 156.050 MHz and 156.175 MHz are currently allocated in the United States to the Public Safety Pool in the private land mobile radio services; however, they were made available to maritime radio users for commercial and port operation purposes in a portion of the Coast Guard-designated New Orleans VTS system.¹⁰ The frequency 156.250 MHz, which is currently allocated to maritime mobile radio, was made available for port operations purposes within the Coast Guard-designated Houston and New Orleans VTS systems,¹¹ and Seattle VTS system.¹² The LA/LB Pilots state that their monitoring of these channels detected no users in the area of the Ports of Los Angeles and Long Beach.¹³

4. In addition, the Los Angeles/Long Beach Harbor Safety Committee (LA/LB Safety Committee) note that the Coast Guard and Marine Exchange of Los Angeles-Long Beach Harbor, Inc., acting for the State of California, currently have a Memorandum of Agreement in which the Coast Guard agrees to provide personnel support for the operation of an interim Vessel Traffic Information Service (VTIS).¹⁴ The VTIS system is an advisory communications service to coordinate vessel movement and prevent damage to or loss of vessels, bridges or other structures, and to protect these

⁵ *Id.*

⁶ 47 C.F.R. § 80.373(f), note 4.

⁷ LA/LB Letter at 1.

⁸ LA/LB Letter at 1.

⁹ *See* 47 C.F.R. § 80.373(f), notes 1 and 2.

¹⁰ Amendment of Parts 2, 81, 83 and 89 of the Rules to Make the Frequencies 156.050 and 156.175 MHz Available for Port Operations Purposes in the Coast Guard Designated New Orleans Vessel Traffic Service Area, Gen Docket No. 78-376, *Report and Order*, 44 FR 55879 (September 28, 1979) (*New Orleans Report and Order*).

¹¹ Amendment of Parts 2, 81, and 83 of the Rules to Make the Frequency 156.250 MHz Available for Port Operation Purposes in Certain Coast Guard Designated Vessel Traffic Services Radio Protection Areas, Docket No. 21370, *Report and Order*, 42 FR 64896 (December 29, 1977) (*Houston Report and Order*).

¹² *See* 47 C.F.R. § 80.383.

¹³ LA/LB Letter at 2.

¹⁴ Letter to the Honorable Stephen Horn, U.S. Representative, from Los Angeles/Long Beach Harbor Safety Committee, dated April 16, 1999 (*LA/LB Safety Committee Letter*).

waters and associated natural resources from environmental harm resulting from such damage or loss. Vessels report, by voice, information related to position, navigation and conditions affecting navigation to the Coast Guard, which tracks the vessels' movements. The LA/LB Safety Committee also recommend the use of either marine VHF Channels 01A, 05A, or 63A for intership communications related to port operations in the Los Angeles and Long Beach ports.¹⁵

5. The LA/LB Pilots also note that authorities responsible for port safety, including the Coast Guard, the California Office of Oil Spill Response and Prevention, and the LA/LB Harbor Safety Committee, fully support the request.¹⁶ The Southern California Marine Radio Council (SCMRC), which is the FCC-designated marine VHF frequency coordinating committee for this region,¹⁷ also supports this request.¹⁸

III. DISCUSSION

6. As an initial step to provide some relief for frequency congestion in communications related to port operations in the Los Angeles and Long Beach port areas the feasibility of using frequency 156.250 MHz for intership communications was investigated by the Commission in conjunction with the Coast Guard and industry. This frequency had not been previously assigned, other than in Coast Guard- designated Houston, New Orleans, and Seattle VTS systems because of its band edge location and the resultant potential harmful interference with land mobile radio assignments on the adjacent public safety frequency 156.240 MHz. However, after reviewing assignments in the Los Angeles and Long Beach area it appears that 156.250 MHz could be utilized without harmful interference to existing radio operations as 156.240 MHz and 156.2475 MHz are not assigned for public safety purposes. Therefore, we believe it is in the public interest to provide in the Rules for the use of frequency 156.250 MHz (marine VHF Channel 05A) in the Los Angeles and Long Beach port areas to alleviate the communications congestion related to port operations. Thus, we propose to amend section 80.373 of the Commission's Rules to so provide. Further, we propose to make assignments on Public Safety Pool frequencies of 156.240 and 156.2475 MHz within 100 miles of the geographic center of Los Angeles, defined as 34° 03' 15" north latitude and 118° 14' 28" west longitude, secondary to marine port operations on 156.250 MHz. We propose to amend Sections 90.20 of the Commission's Rules to indicate the aforementioned secondary status. We seek comment on these proposals.

7. Accordingly, effective upon the adoption date of this *Notice of Proposed Rule Making*, no applications for public safety pool frequencies of 156.240 and 156.2475 MHz within 100 miles of the geographic center of Los Angeles will be accepted for filing during the pendency of the *Notice of Proposed Rule Making*. Any applications received on or after this date will be returned as unacceptable for filing.

8. Our decision to impose the freeze on Public Safety Pool frequencies of 156.240 and 156.2475 MHz within 100 miles of the geographic center of Los Angeles is procedural in nature and

¹⁵ LA/LB Safety Committee Letter at 2.

¹⁶ LA/LB Letter at 3.

¹⁷ See 47 C.F.R. § 80.514.

¹⁸ LA/LB Letter at 3.

therefore the freeze is not subject to the notice and comment and effective date requirements of the Administrative Procedures Act. *See* 5 U.S.C. § 553(b)(A), (d); *Kessler v. FCC*, 326 F.2d 673 (D.C. Cir. 1963). Moreover, there is good cause for the Commission's not using notice and comment procedures in this case, or making the freeze effective 30 days after publication in the Federal Register, because to do so would be impractical, unnecessary, and contrary to the public interest because compliance would undercut the purpose of the freeze.¹⁹

9. In addition, we note that currently there are no private coast stations authorized to operate on marine VHF Channel 05A within the Los Angeles and Long Beach area. We propose not to authorize future private coast stations on this channel if we ultimately designate marine VHF Channel 05A for port operations. The Marine Exchange of Los Angeles-Long Beach Harbor, Inc., which operates the VTIS for the ports of Los Angeles and Long Beach, describes its area of responsibility as within a 25-nautical mile radius of Point Fermin.²⁰ We propose to designate this area as the radio protection area for port operations on 156.250 MHz. We do not believe that such an approach would adversely affect private coast operations. In this connection, Wireless Telecommunications Bureau staff would assist future applicants in finding suitable alternative channels to Channel 05A. We seek comment on this proposal.

10. Finally, we propose to amend Section 0.331 of the Commission's Rules to authorize the Chief, Wireless Telecommunications Bureau to amend the maritime service rules at the request of the United States Coast Guard to indicate that the use of marine VHF frequencies in defined port areas are available for intership communications related to port operations to alleviate the communications congestion related to port operations. We believe that this approach will allow the Commission to expedite these requests, which will increase safe vessel transit and protect U.S. waters and associated natural resources from environmental harm. We seek comment on this proposal.

IV. CONCLUSION

11. We conclude that permitting frequency 156.250 MHz (marine VHF Channel 05A) for intership communications related to port operations in the Los Angeles and Long Beach, California ports will allow the LA/LB Pilots to manage vessel traffic in that area more efficiently and protect the marine environment by preventing vessel collisions and groundings. We are proposing, therefore, to amend Section 80.373(f) of the Commission's Rules to indicate that frequency 156.250 MHz (marine VHF Channel 05A) is available only for intership communications related to port operations within the Los Angeles and Long Beach harbor areas. The radio protection area will be defined as "within a 25-nautical mile radius of Point Fermin, California." Additionally, we are proposing to amend Section 90.20(c) of the Commission's Rules to indicate that assignments on public safety pool frequencies of 156.240 and 156.2475 MHz within 100 miles of the geographic center of Los Angeles are secondary to marine port operations on 156.250 MHz.

V. PROCEDURAL MATTERS

12. *Ex Parte Presentations.* This *Notice of Proposed Rule Making* is a permit-but-disclose notice and comment rule making proceeding. *Ex parte* presentations are permitted, provided they are

¹⁹ *See* 5 U.S.C. § 553(b)(A), (d)(3).

²⁰ Letter to the Ms. Regina Keeney, Chief, Wireless Telecommunications Bureau from Marine Exchange of Los Angeles-Long Beach Harbor, Inc., dated April 11, 1997 (*Marine Exchange Letter*).

disclosed as provided in Commission Rules.²¹

13. *Pleading Dates.* Pursuant to Sections 1.415 and 1.419 of the Commission's rules,²² interested parties may file comments on before January 18, 2000, and reply comments on or before February 1, 2000. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See* Electronic Filing of Documents in Rulemaking Proceedings, 63 Fed. Reg. 24,121 (1998).

14. Comments filed through the ECFS can be sent as an electronic file via the Internet to <<http://www.fcc.gov/e-file/ecfs.html>>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply.

15. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appear in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Room TW-B204, Washington, D.C. 20554.

16. Parties who choose to file by paper should also submit their comments on diskette. These diskettes should be submitted to: Public Safety and Private Wireless Division, Wireless Telecommunications Bureau, 445 12th Street, S.W., Washington, D.C. 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible format using WordPerfect 5.1 for Windows or compatible software. The diskette should be accompanied by a cover letter and should be submitted in "read only" mode. The diskette should be clearly labeled with the commenter's name, proceeding (including the docket number in this case, type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase: "Disk Copy - Not an Original." Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, N.W., Washington, D.C. 20037.

Initial Regulatory Flexibility Act Analyses

17. As required by the Regulatory Flexibility Act,²³ the Commission has prepared an Initial Regulatory Flexibility Analysis of the possible impact on small entities of the proposals suggested in the *Notice of Proposed Rule Making*. *See* Appendix A. Written public comments are requested on the Initial

²¹ *See generally* 47 C.F.R. §§ 1.1202, 1.1203, 1.1206.

²² *See* 47 C.F.R. §§ 1.415, 1.419

²³ *See* 5 U.S.C. § 603

Regulatory Flexibility Analysis. These comments must be filed in accordance with the same filing deadlines as comments on the rest of this Notice but they must have a separate and distinct heading designating them as responses to the Initial Regulatory Flexibility Analysis. The Office of Public Affairs, Reference Operations Division, will send a copy of this *Notice of Proposed Rule Making*, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

VI. ORDERING CLAUSES

18. Authority for issuance of this *Notice of Proposed Rule Making* is contained in Sections 4(i), 4(j), 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), and 403.

19. NOTICE IS HEREBY GIVEN and COMMENT IS SOUGHT on the proposed regulatory changes described in the *Notice of Proposed Rule Making*, as set forth in Appendix B.

20. IT IS FURTHER ORDERED that the Commission's Office of Public Affairs, Reference Operations Division, SHALL SEND a copy of this *Notice of Proposed Rule Making*, including the Initial Regulatory Flexibility Analyses, to the Chief Counsel for Advocacy of the Small Business Administration.

21. IT IS FURTHER ORDERED that effective upon the adoption date of this *Notice of Proposed Rule Making*, no applications will be accepted for filing for the public safety frequencies of 156.240 and 156.2475 MHz within 100 miles of the geographic center of Los Angeles, defined as 34° 03' 15" north latitude and 118° 14' 28" west longitude. This freeze will continue until the Commission makes an announcement that such applications acceptance will resume.

22. For further information, contact James Shaffer of the Wireless Telecommunications Bureau, Public Safety and Private Wireless Division, at (202) 418-0680 or via E-mail at "mayday@fcc.gov".

FEDERAL COMMUNICATIONS COMMISSION



Magahe Roman Salas
Secretary

APPENDIX A

INITIAL REGULATORY FLEXIBILITY ANALYSIS

As required by Section 603 of the Regulatory Flexibility Act,²⁴ the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected significant economic impact on small entities by the policies and rules proposed in the *Amendment of Parts 0, 80, and 90 of the Commission's Rules to Make the Frequency 156.250 MHz Available for Port Operations Purposes in Los Angeles and Long Beach, CA Ports*. Written public comments are requested on the IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *Amendment of Parts 0, 80, and 90 of the Commission's Rules to Make the Frequency 156.250 MHz Available for Port Operations Purposes in Los Angeles and Long Beach, CA Ports*, provided in paragraph 11 of the item. The Commission will send a copy of the *Amendment of Parts 0, 80, and 90 of the Commission's Rules to Make the Frequency 156.250 MHz Available for Port Operations Purposes in Los Angeles and Long Beach, CA Ports*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. See 5 U.S.C. § 603(a). In addition, the *Amendment of Parts 0, 80, and 90 of the Commission's Rules to Make the Frequency 156.250 MHz Available for Port Operations Purposes in Los Angeles and Long Beach, CA Ports* and IRFA (or summaries thereof) will be published in the Federal Register. See *id.*

I. Need for and Objectives of the Proposed Rule: The purpose of this *Notice* is to determine whether it is in the public interest, convenience, and necessity to amend our rules to allow frequency 156.250 MHz (marine VHF Channel 05A) to be used for communications related to port operations in the Los Angeles and Long Beach harbor areas. These proposed actions should protect the marine environment and increase the safety and efficiency of navigation and movement of ship by allowing the LA/LB Pilots to manage vessel traffic in that area more efficiently.

II. Legal Basis: Authority for issuance of this *Notice of Proposed Rule Making* is contained in Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 303(r).

III. Description and Estimate of the Number of Small Entities to Which Rule Will Apply: The proposed amendments will affect small businesses in the marine radio services that use a marine VHF radio. Neither the Commission nor the SBA has developed a definition of small entities applicable to marine radio services that use a marine VHF radio. Therefore, the applicable definition of small entity is the definition under the SBA rules applicable to radiotelephone (wireless) companies. This provides that a small entity is a radiotelephone company employing no more than 1,500 persons. According to the Bureau of the Census, only twelve radiotelephone firms out of a total of 1,178 such firms which operated during 1992 had 1,000 or more employees. Therefore, even if all twelve of these firms were companies that used a marine VHF radio, nearly all such companies were small businesses under the SBA's definition. We invite comment on whether this is the correct definition to use in this context.

IV. Description of Projected reporting, recordkeeping, and other compliance requirements: There are no reporting, recordkeeping and other compliance requirements proposed.

V. Significant Alternatives to Proposed Rules Which Minimize Significant Economic Impact on Small Entities and Accomplish Stated Objectives: The proposed rules would make frequency

²⁴ 5 U.S.C. § 603.

156.250 MHz (marine VHF Channel 05A) available for intership communications related to port operations in the Los Angeles and Long Beach harbor areas. We believe that this flexible approach allows the LA/LB Pilots to manage vessel traffic in the Los Angeles and Long Beach harbor areas more efficiently and protect the marine environment by preventing vessel collisions and groundings. Currently under the rules frequency 156.250 MHz is currently allocated to maritime mobile and was made available for port operations purposes within the Coast Guard designated Houston and New Orleans, and Seattle Vessel Traffic Service (VTS) systems. We seek comments on whether the proposed amendment are sufficient to alleviate the communications congestion related to port operations in the Los Angeles and Long Beach harbor areas. This decision benefits small entities and seeks to ensure reliable marine communications, increase safe vessel transit to protect U.S. waters and associated natural resources from environmental harm, and increase port efficiency thereby promoting growth within the shipping community.

VI. Federal rules which overlap, duplicate or conflict with these rules: None

APPENDIX B

Title 47 of the Code of Federal Regulations, Parts 0 and 80, are proposed to be amended as follows:

Part 0 – Commission organization

1. The authority citation for Part 0 continues to read as follows:

AUTHORITY: Secs. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155.

2. Section 0.331 is amended by adding new paragraph (d)(3) to read as follows:

§ 0.331 Authority delegated.

* * * * *

(3) Designate by footnote to frequency table in 80.373(f) marine VHF frequencies are available for intership port operations communications in defined port areas.

Part 80 – Stations in the Maritime Services

3. The authority citation for Part 80 continues to read as follows:

AUTHORITY: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply 48 Stat. 1064-1068, 1081-1105, as amended; 47 U.S.C. 151-155, 301-609; 3 UST 3450, 3 UST 4726, 12 UST 2377.

4. Section 80.373 is amended by revising the table in paragraph (f) to revise footnote # , to read as follows:

§ 80.373 Private communications frequencies.

* * * * *

(f)

Frequencies in the 156-162 MHz band				
Channel designator	Carrier frequency (MHz)		Points of communication (Intership and between coast and ship unless otherwise indicated)	
	Ship transmit	Coast transmit		
Port Operations				
01A ¹	156.050	156.050		
63A ¹	156.175	156.175		
05A ²	156.250	156.250		
*	*	*	*	*

¹ 156.050 MHz and 156.175 MHz are available for port operations and commercial communications purposes when used only within the U.S. Coast Guard designated Vessel Traffic Services (VTS) area of New Orleans, on the lower Mississippi River from the various pass entrances in the Gulf of Mexico to Devil's Swamp Light at River Mile 242.4 above head of passes near Baton Rouge.

² 156.250 MHz is available for port operations communications use only within the U.S. Coast Guard designated VTS radio protection areas of New Orleans and Houston described in § 80.383. 156.250 MHz is available for intership port operations communications used only within the area of Los Angeles and Long Beach harbors, within a 25-nautical mile radius of Point Fermin, California.

* * * * *

Part 90 – Private Land Mobile Radio Services

5. The authority citation for Part 90 continues to read as follows:

AUTHORITY: Secs. 4, 251-2, 303, 309 and 322, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 251-2, 303, 309 and 322 unless otherwise noted.

6. Section 90.20(c) is amended by revising the table in paragraph (3) to revise paragraph (d) to add footnote 78 , to read as follows:

§ 90.20 Public Safety Pool.

* * * * *

(3)

PUBLIC SAFETY POOL FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitations	Coordinator
* * * * *			
156.240	do	43, 77	PH
156.2475	do	43, 44, 77	PH
* * * * *			

* * * * *

(78) This frequency will be secondary to marine port operations within 100 miles of Los Angeles (coordinates 34° 03' 15" north latitude and 118° 14' 28" west longitude).

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